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December 1, 2020

VIA ECF

Hon. Michael A. Shipp, U.S.D.J.
United States District Court - District of New Jersey
402 East State Street – Courtroom 5W
Trenton, New Jersey 08608

Re: Michael Patrick SianoTM v. M&T Bank, *et al.*
Civil Action No.: 3:20-cv-12827-MAS-DEA

Dear Judge Shipp:

This firm represents Defendant M&T Bank (“M&T”) in the above-referenced action. We write in reference to the document styled “Brief in Opposition” filed November 26, 2020. See Dkt. No. 9. For the reasons set forth below, Plaintiff’s Opposition is late, should be rejected, and M&T’s Motion to Dismiss Plaintiff’s Complaint should be granted as unopposed.

By way of background, M&T filed its Motion to Dismiss Plaintiffs’ Complaint on November 3, 2020, and Plaintiff was served with a copy of same via FedEx. See Dkt. No. 7. Consistent with M&T’s Notice of Motion, the docket reflects that its Motion to Dismiss was returnable on December 7, 2020. Accordingly, pursuant to L. Civ. R. 7.1(d)(2), Plaintiffs’ Opposition to M&T’s motion to dismiss was due on or before November 23, 2020. On November 30, 2020 – seven (7) days after Plaintiff’s deadline and less than 14 days prior to the return date – the undersigned received an ECF notification that Plaintiffs filed Opposition. See Dkt. No. 9, with a notation that the “transaction was entered on 11/30/2020 at 11:41 AM EST and filed on 11/26/2020”.

The docket does not reflect any application to enlarge time to file the Opposition prior to the untimely filing. Accordingly, pursuant to L. Civ. R. 7.1(d)(7), the Opposition is procedurally defective, should be rejected, and M&T’s Motion to Dismiss should be granted as unopposed.

If, however, the Court is inclined to consider the substance of Plaintiff’s Opposition, pursuant to L. Civ. R. 7.1(d)(5), M&T respectfully requests an automatic extension and adjournment of Defendant’s Motion to Dismiss to December 21, 2020 – the next available motion day following the originally noticed date – with M&T’s reply papers due on or before December 14, 2020. The original noticed motion day has not previously been extended or adjourned and is being requested in light of Plaintiff’s late service of the Opposition. We thank the Court for its consideration of this application and welcome the opportunity to address any questions or concerns the Court may have.

Respectfully submitted,

/s/ James P. Berg
James P. Berg

cc: Michael Patrick SianoTM (via First Class Mail & Email)

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